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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/376,461 08/18/99 RILLIE

D 1128.006A

EXAMINER

PM82/0620

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ART UNIT

PAPER NUMBER

3634

DATE MAILED:

06/20/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
**09/376,461**

Applicant(s)

**Rillie**

Examiner

**Curtis Cohen**

Group Art Unit

**3634**



☒ Responsive to communication(s) filed on Aug 18, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-15 is/are pending in the application.

Of the above, claim(s) 10-15 is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-9 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3634

## **DETAILED ACTION**

### ***Election/Restriction***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-9 are drawn to the apparatus, classified in class 52, subclass 200.
- II. Claims 10-15, drawn to the method, classified in class 29, subclass 33R.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by another materially different process such as extruding the sheet metal and then forming the sheet metal into a frustoconical shape.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. Rogitz on June 12, 2000 a provisional election was made without traverse to prosecute the invention of a roof flashing, claims 1-9. Affirmation of this election must be made by applicant in replying to this Office action. Claims 10-15 are

Art Unit: 3634

withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 5 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5, line 2, the recitation of "at least one rib" is indefinite because it is not clear if this is a duplicate recitation of the rib recited in claim 3 or is this a different rib?

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Art Unit: 3634

Claims 1-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Chao et al #5,896,713. Chao et al teach a skylight having a flashing that is a frustoconical shaped curb. A skirt extends from the curb and includes a plurality of surface strengthening ribs that extend radially on the skirt.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over DeBlock et al #5,655,339 in view of Hoy et al. DeBlock et al teach that it is known in the art to provide a tubular skylight comprising a flashing, a transparent dome, a skylight tube, and a frustoconical shaped curb defining an open top. DeBlock et al do not teach a seamless flashing. Hoy et al teach that it is known in the art to provide a seamless curb member 45 as recited in claim 6 of Hoy et al to provide a leak-proof and condensation-proof assembly. For this reason, it would have been obvious to make DeBlock et al as a seamless structure as taught by Hoy et al.

Claims 2-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeBlock et al and Hoy et al as applied to claim 1 above, and further in view of Blackmon et al #5,956,191. DeBlock et al and Hoy et al teach the invention as discussed in the rejection above including the teaching of a skirt. Neither reference teaches that it is known to provide a plurality of ribs

Art Unit: 3634

oriented radially on the skirt. Blackmon et al teaches that it is known to provide a plurality of ribs 40 extending outwardly to fortify the plate member. For this reason, it would have been obvious to one having ordinary skill in the art, at the time of applicants' invention, to provide DeBlock et al with a radially extending reinforcing member as taught by Blackmon et al.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Borghetto is cited for teaching a rib 43. Sutton is cited for teaching a skylight. Sutton Re 36,496 is cited for teaching a skylight. Chao is cited for teaching a dome. Grubb is cited for teaching Figure 2. DeBlock et al '581 is cited for teaching a skylight.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis Cohen whose telephone number is (703) 308-2106.

The fax phone number for this Group is (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

C. Cohen

June 14, 2000



Daniel P. Stodola  
Supervisory Patent Examiner  
Group 3600